IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 25 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

BARODA RUBBER INDUSTRIES

Appearance:

1. INCOME TAX REFERENCE No. 25 of 1993
MRS MONA BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 26/02/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for our opinion under Section 256 (1) of the Income-tax Act, 1961 ('the Act' for short), for the assessment year 1984-85:

"Whether on the facts and in the circumstances of the case and in law, the Appellate Tribunal was right in holding that the amount of Rs.10,20,313/- forgone by the retiring Directors in favour of the assessee could not be subjected to tax under the provisions of sec.28 (iv) of the I.T.Act, 1961?"

2. The assessee is a Private Limited Company. In the previous year relevant to the assessment under consideration, the assessee company had transferred its entire paid up capital of equity shares and preference shares to Associated Rubber Industries Limited., a Public Limited Company. Thus, the assessee company got converted into a hundred per cent subsidiary company of the Associated Rubber Industries Ltd. During the course of assessment proceedings, the assessing officer noticed that the deposits lying to the credit of the outgoing management in the books of the assessee company have been compounded downwards by Rs.10,20,313/- and on remission of the liability, the amount of Rs.10,20,313/- has been transferred and credited to the capital reserve. In view of the agreement between the holding company and the assessee subsidiary company, the Directors agreed to forgo deposits amounting to Rs.10,20,313/-. Therefore, the Assessing Officer held that the remission of unsecured loans to the extent of Rs.10,20,313/- was a benefit in the nature of income within the meaning of sec.28 (iv) of the Income-tax Act, arising during the course of business activities and made an addition of Rs.10,20,313/- to the returned income. The assessing officer relied on the decision of the CIT (A) upholding similar addition made by the assessing officer in the case of Chetan Chemicals Pvt. Ltd., Nandesari for assessment year 1982-83. In appeal, the CIT (A) held that the remission of credits to the extent of Rs.10,20,313/- by the old management did not amount to any benefit or perquisite arising from any business transaction under Section 28 (iv) of the Act and thereby deleted the addition. The Tribunal confirmed the order of the CIT (A). Hence this reference at the instance of the revenue.

3. We have heard Mrs. Mona Bhatt, learned Standing

Counsel for the revenue. Though served, none appears for the respondent - assessee.

4. At the hearing of this reference, our attention is invited to the decision dated 23.10.2001 of this Court in ITR No.148 of 1988 in CIT v. Chetan Chemicals Private Limited. While making the present reference, the Tribunal had noted that since reference on a similar question was made in Chetan Chemicals Private Limited, the present reference was being made. In the aforesaid decision dated 23.10.2001, this Court considered the provisions of section 41 (1) and Section 28 (iv) of the Act and held in the facts of that case that since it could not be said that the assessee was carrying on business of obtaining loans, remission of loan by such creditors of the assessee cannot be said to be a benefit arising out from the business.

5. In the facts of the instant case also as set out hereinabove, since it cannot be said that the assessee was carrying on business of obtaining loans, remission of loan by such creditors of the assessee cannot be said to be a benefit arising out from the business.

6. In view of the above, we are of the opinion that the Tribunal was right in holding that the amount of Rs.10,20,313/- forgone by the retiring Directors in favour of the assessee could not be subjected to tax under the provisions of Section 28 (iv) of the Act.

We accordingly answer the question in the affirmative i.e., in favour of the assessee and against the revenue.

The reference accordingly stands disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

(karan)